

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

February 23, 2018

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 13OD-121

OAHU

Second Amendment of Prior Board Action of October 11, 2013, Item D-3; as amended by January 24, 2014, Item D-7; *Consent to Merger of Oceanic Institute into Hawaii Pacific University; Mutual Termination of General Lease No. 3709; Oceanic Institute, Lessee; Issuance of Direct Lease to Hawaii Pacific University for Scientific Research and Public Exhibiting Facilities of Marine Life together with Pipeline and Encroachment Easements; Waimanalo, Koolaupoko, Oahu; TMK (1) 4-1-014:004 & 011. And*

The Amendment is to seek Board’s Consent to an Agreement and Mortgage and a Covenant of Use to Encumber the Requested Lease with a Mortgage, Covenant to a Non-Discrimination Clause and Revision of Lease Conditions.

Background:

On October 11, 2013, under agenda item D-3, the Board approved the subject request involving direct issuance of a 65-year lease to Hawaii Pacific University (“HPU”). The new lease is intended to replace General Lease No. (GL) 3709, currently leased to the Oceanic Institute (“OI”) and due to expire in 2027. At its meeting of January 24, 2014, under agenda item, D-7, the Board amended its 2013 action by incorporating pipeline easement, revising the rent payable, and other technical changes. A copy of the 2014 submittal (enclosing the 2013 action) is attached as **Exhibit A-1**.

Federal Interest:

In 2000, OI entered into a Covenant of Purpose, Use and Ownership for the Information Technology and Training Center with the United States Department of Commerce, Economic Development Administration (EDA), pursuant to a Financial Assistance Award in the amount of \$1,000,000.00 against the leased property under GL-3709. The Covenant was recorded in the Bureau of Conveyances on January 12, 2001, as Doc. No. 2001-005746 (**Exhibit B-1**). The Covenant provided that if the property was sold, leased, transferred, conveyed or mortgaged without the prior written approval of EDA, then OI would compensate the federal government the amount of the grant funds disbursed or the federal government’s fair share of the property.

The Board was not a party to this covenant.

A second award in the amount of \$1,500,000.00 was made to OI by EDA in 2008. A second Covenant of Purpose, Use and Ownership for the Oceanic Learning Center was entered into by OI and recorded in the Bureau on November 10, 2010, as Doc. No. 2010-173241 (**Exhibit C-1**). The property subject to the covenant was the property under GL-3709. The Board was also not a party to this covenant.

In 2014 OI was officially merged into and with HPU.

As a result of the request to and approval by the Board to issue a new lease to HPU, EDA has requested that the prior covenants be terminated and cancelled and that HPU enter into a new Agreement and Mortgage (**Exhibit D-1**) to cover both of the prior awards.

#### Agreement and Mortgage Document and Covenant of Use

Under the Agreement and Mortgage made by HPU, any modification, termination or assignment of the ground lease without the prior written permission from EDA will be considered a violation of Award Agreement with EDA. The amount of the lien, encumbrance and debt created by the Agreement and Mortgage is the Federal Share of the original award. Federal Share is generally the amount computed by multiplying the percentage of the federal participation in a project to the fair market value of any property attributable to EDA's participation in the project.

Upon the expiration of the useful life of both of the projects, the Agreement and Mortgage may be released with prior EDA permission provided that, prior to and as a condition of the release, HPU takes one of the following actions:

- (1) demolish the applicable improvements;
- (2) pay to EDA the Federal Share of the applicable improvements; or
- (3) cause the State of Hawaii, as the fee owner, to record a covenant of use against the fee simple interest in the Project Property providing that unless and until the applicable improvements have been demolished or the Federal Share therefor paid to the EDA, any deed, lease or other transfer by the State of Hawaii of the subject Property will include a restriction prohibiting the use of the applicable land and improvements for inherently religious activities in violation of applicable federal law.

A copy of the Agreement and Mortgage is attached.

In addition to the Agreement and Mortgage, EDA is requiring that a Covenant of Use (**Exhibit E-1**) be placed on the subject Property, including the fee interest. The Covenant of Use provides that whenever the State sells, leases or otherwise transfers all or any portion of the Project Property, the applicable deed, lease or other transfer document shall include a provision

that the grantee, lessee or other transferee shall not use the Project Property in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection. The Board's current form of deed already contains a similar provision.

The Covenant of Use also requires that HPU will not use the Property for any purpose that would violate the non-discrimination requirements contained in 13 CFR 302.20. A similar provision is contained in the Board's standard form of lease.

The Board is being asked to consent to the Agreement and Mortgage and to execute the Covenant of Use.

Amendment of Standard Lease Conditions:

Because of the conditions required by EDA as part of the Agreement and Mortgage, the Attorney General's office and the Lessee propose that the following language be inserted into the standard lease form:

Pursuant to the foregoing, Lessee intends, with the prior consent of Lessor, to execute and deliver to the United State Department of Commerce, Economic Development Administration concurrently with the execution and delivery of this Lease an Agreement and Mortgage which, *inter alia*, sets forth certain options with respect to the release of that Agreement and Mortgage. Lessee understands and agrees that, notwithstanding any consent by Lessor to the Agreement and Mortgage, Lessor has not made a determination as to whether Lessor will execute a further covenant with respect to inherently religious activities in order to facilitate the release of the Agreement and Mortgage. Accordingly, if Lessee desires to pursue that option in connection with a release, Lessee will be required to make further application to the Lessor.

This provision allows DLNR and HPU to negotiate which of the options HPU will pursue at the termination of the Agreement and Mortgage.

Environmental Assessment Exemption Notification

At its prior meetings of October 2013 and January 2014, the Board declared the request exempt from the preparation of environmental assessment. The requested amendment involves negligible or no expansion or change of use of the current condition. Therefore, staff believes the same exemption declared by the Board in October 2013 is still applicable.

Recommendation: That the Board:

1. Amend its prior action of October 11, 2013, Item D-3, as amended by January 24, 2014, Item D-7 by adding the lease term set forth above.
2. Authorize the Chairperson to Consent to the Agreement and Mortgage between HPU and the Department of Commerce, Economic Development Administration; and
3. Authorize the encumbrance of the fee interest under the lease as required by the Covenant of Use and delegate to the Chairperson to execute the Covenant and Use.

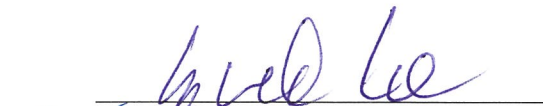
All of the actions authorized by this Recommendation shall be subject to:

- A. Review and approval by the Department of the Attorney General; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

# EXHIBIT A-1

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

January 24, 2014

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 13OD-121

OAHU

Amend Prior Board Action of October 11, 2013, Item D-3; Consent to Merger of Oceanic Institute into Hawaii Pacific University; Mutual Termination of General Lease No. 3709; Oceanic Institute, Lessee; Issuance of Direct Lease to Hawaii Pacific University for Scientific Research and Public Exhibiting Facilities of Marine Life; Waimanalo, Koolaupoko, Oahu; TMK (1) 4-1-014:004. And

The Amendment is to seek Board's Authorization for Incorporating Pipeline and Encroachment Easements, Revising the Rent Payable, and Adding Tax Map Key (1) 4-1-014:011 to the Direct Lease.

BACKGROUND:

On October 11, 2013, under agenda item D-3, the Board approved the subject request involving direct issuance of a 65-year lease to Hawaii Pacific University ("HPU"). The new lease is intended to replace General Lease No. (GL) 3709, currently leased to the Oceanic Institute ("OI") and due to expire in 2027. A copy of the prior submittal is attached as **Exhibit 1**.

Today's request is to seek the Board's authorization to include the pipeline and encroachment easements and revise the rent payable accordingly, and add a tax map key in the new lease.

GL 234 and Hawaiian Home Lands in Waimanalo

Pursuant to Section 203 of Hawaiian Homes Commission Act 1920, "Waimanalo (four thousand acres, more or less), in the District of Koolaupoko", is designated, among others, as "available lands", and such "available lands" are excluded from the definition of public lands under Section 171-2, HRS.

The area under GL 3709 was also originally part of the "available lands" as described above. When the Board approved the sale of GL 3709 on March 2, 1962, under agenda item F-22, the submittal actually mentioned that "... the land in question is a portion of the lands acquired from the Department of Hawaiian Home Lands in the exchange ...". The exchange effectively removed the subject area from the "available lands" and GL 3709 was subsequently issued to OI around 1962.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
January 24, 2014 *uo.*

**EXHIBIT "A-1"**  
D-7

In 1982, OI found out it needed a forty (40) foot strip of land outside the GL 3709 area to erect security fencing. OI requested permission from the Hawaii Home Commission (“HHC”), because the requested strip of land was portion of available lands under the jurisdiction of the Department of Hawaiian Home Lands (“DHHL”).<sup>1</sup> The forty (40) foot strip of land is identified as tax map key (1) 4-1-014:011 with an area of 3.856 acres.

On August 26, 1982, HHC approved the issuance of a revocable permit to OI for the requested purposes. The revocable permit was subsequently replaced by a lease (“GL 234”)<sup>2</sup> approved by HHC on November 28, 1989 for “the purpose of constructing, maintaining and operating a scientific research facility for the study of marine life.” OI was obligated to pay rent to DHHL under GL 234, in addition to the rent payable to DLNR under GL 3709 over two different leased premises owned and managed by two different State entities.

On June 25, 2002, HHC approved a motion to withdraw its claim to Kalanianaʻole Highway right-of-way [including the GL 234 area], in addition to other lands in Waimanalo. A copy of a letter dated September 30, 2002 from DHHL is attached as **Exhibit 2**. As noted on page 2 of the DHHL letter, the resolution of the title issue enabled the Department of Transportation (“DOT”) to conduct the highway improvements and rock slide mitigation measures.

EO 4177 [including the GL 234 area] was issued to DOT in 2004, and GL 234 was placed under the management of DOT. Since 2004, OI continued to remit the rent payable under GL 234 to DOT. Currently, the area under GL 234 is occupied by portions of OI’s fish tanks, wall, and landscaping area.

Upon review of EO 4177, staff notes that GL 234 was not included as an encumbrance when the management jurisdiction of such lands was transferred to DOT under the EO. In hindsight, a new lease should have been processed either by DOT or DLNR around 2004 to replace GL 234 since DHHL was no longer the landlord.

With the forthcoming new 65-year lease, staff intends to correct the oversight by adding the former GL 234 area to the GL 3709 area colored red and yellow respectively on **Exhibit 3**.

#### Pipeline easement

Pursuant to GL 3709, OI has the right to the “...easements under and across Kalanianaʻole Highway ... to the ocean for the pumping and discharge of sea water as required for the operation of the exhibiting and research facilities ...”

Upon checking with OI, staff understands that the current pipelines are at the original locations when GL 3709 was issued. In addition, OI is no longer discharging any saltwater to the ocean.

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<sup>1</sup> The subject 40-foot strip of land was not under the jurisdiction of the Board of Land and Natural Resources in 1982. OI went to the appropriate agency and obtained permission to utilize such land.

<sup>2</sup> DHHL also used “General Lease” in its documentation. However, neither the Land Board nor DLNR was involved in the issuance and management of GL 234.

Instead, OI has multiple underground injection wells, as authorized by the Department of Health, to address the issue of discharge water, in accordance with the current legal requirement.

Staff notes that the rights to the pipeline easement originally provided in GL 3709 were not clearly addressed in the October 2013 Board approval. Since the existing lease includes the right to such pipeline easement as described above, staff believes including a similar pipeline easement in the new lease is in order. HPU agrees to provide the map and description of the pipeline easement, to be inserted into the new lease.

#### DOT's comments on GL 234 and pipeline easement

DOT, under its policy, requires any party to obtain authorization from DOT to continue the usage of such drainage facilities over the right-of-way. Therefore, DOT asks that the new lease be subject to such approval as DOT may deem necessary. HPU has no objection to this requirement.

Furthermore, DOT has no objection to the continuance of the 40-foot encroachment easement area described above in the new lease, provided that a standard condition allowing the withdrawal of the easement area, or portions thereof, for public purposes including road widening, is incorporated in the lease. In the event this condition is triggered, HPU will be required to remove the improvements upon request from DOT. Staff will make the recommendation accordingly, noting that withdrawal for public purposes is a standard lease condition.

Staff notes that the legal description of the lease will cover Parcel 4 (105 acres+), together with the encroachment and the pipeline easements.

#### Rent payable for the encroachment and pipeline easement

As mentioned in the October 2013 submittal, it was determined that \$140,800 was the fair market rent for 105 acres of lease land pursuant to an appraisal done around October 2012, which is equivalent to approximately \$1,300 per acre.

Staff understands OI is currently paying \$9,000 per year under GL 234, equivalent to about \$2,300 per acre. Staff recommends the Board authorize adding an additional \$9,000 to the annual rent of the lease previously approved by the Board. HPU indicates its agreement to adding \$9,000 to the annual rent payable to the new lease.

Since the pipeline easement was originally provided for in the current lease, the appraisal done in 2012 for the purpose of rent reopening would have taken into account the pipeline easement. Therefore, staff does not recommend any additional rent attributable to the pipeline easement.

Under the new lease, HPU is consolidating the rental payment to one single State agency, i.e. DLNR, instead of two separate payments to DOT and DLNR.

To conclude, staff recommends the Board authorize to amend its prior action and set the annual

base rent for the new lease at \$149,800.

Environmental Assessment Exemption Notification

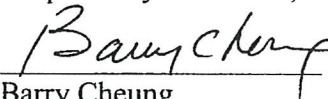
At the prior meeting of October 2013, the Board declared the request exempt from the preparation of environmental assessment. See Exhibit B of the prior submittal. The proposed incorporation of the pipeline and encroachment easements is to document the continuance of the current use of State lands. Therefore, staff believes the same exemption declared by the Board in October 2013 is still applicable, subject to the addition of tax map key (1) 4-1-014:011 to the direct lease.

Staff recommends the Board amend its prior action by adding the pipeline and encroachment easements as described above in the new lease to HPU.

RECOMMENDATION: That the Board:

1. Amend its prior action of October 11, 2013, Item D-3, by adding the pipeline and encroachment easements in the new lease to be issued to Hawaii Pacific University subject to the terms and conditions described above, and further subject to the following:
  - A. The annual base rent for the first thirty (30) years of the new lease shall be \$149,800;
  - B. Withdraw for public purpose provision which allows the leased premises or easement area to be withdrawn for public purposes including road widening; and the lessee shall, upon request by DOT, remove all improvements within such withdrawn area;
  - C. The pipeline easement shall be subject to the approval of the Department of Transportation; and
  - D. Add tax map key (1) 4-1-014:011 to the direct lease.
2. Other terms and conditions in the October 11, 2013 approval shall remain in full force and effect.

Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 11, 2013

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 13OD-121

OAHU

Consent to Merger of Oceanic Institute into Hawaii Pacific University; Mutual Termination of General Lease No. 3709, Oceanic Institute, Lessee; Issuance of Direct Lease to Hawaii Pacific University for Scientific Research and Public Exhibiting Facilities of Marine Life, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-014:004.

APPLICANT:

Oceanic Institute and Hawaii Pacific University, domestic nonprofit corporations

LEGAL REFERENCE:

Section 171-6, 43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-014:004, as shown on the attached map labeled **Exhibit A**.

AREA:

105.937 acres, more or less.

ZONING:

State Land Use District: Conservation  
City and County of Honolulu LUO: P-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

October 11, 2013 90.

D-3

**EXHIBIT " 1 "**

CURRENT USE STATUS:

Encumbered by General Lease No. ("GL") 3709 issued to Oceanic Institute for constructing, maintaining and operating a scientific research facility for the study of marine life and a public exhibiting facility of marine life, together with easements for pipeline rights-of-way for the intake and discharge of sea waters, commencing from October 21, 1962 and expiring on October 20, 2027.

CHARACTER OF USE:

Scientific research and public exhibiting facilities of marine life purposes.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

Upon mutual termination of GL 3709.

ANNUAL RENT:

A rental reopening was conducted effective October 21, 2012, which determined the annual rent at \$140,800 or 1.5% of gross annual revenue, whichever is the greater, for the period from October 21, 2012 to October 20, 2022. Since the reopening was done recently, staff recommends the Board adopt the same rent for the first ten (10) years of the requested lease.

Further, staff recommends a fixed 30% to the base rent and 0.5% to the percentage rent increase for two subsequent ten (10) years periods, which will be followed by normal 10-year reopenings. Such rental structure is likely to enhance the fiscal planning for the lessee. The proposed rent structure is provided below:

Year 1 – 10

\$140,800 or 1.5% of gross annual revenues, whichever is the greater.

Year 11 – 20

\$140,800 x 1.30 or 2.0% of gross annual revenues, whichever is the greater.

Year 21 – 30

\$140,800 x 1.60 or 2.5% of gross annual revenues, whichever is the greater.

METHOD OF PAYMENT:

Base rent - semi-annual payments, in advance.

Percentage rent semi-annual payments, in arrears.

RENTAL REOPENINGS:

The annual base rent and the percentage rent shall be reopened and redetermined at the end of the thirtieth (30<sup>th</sup>), fortieth (40<sup>th</sup>), fiftieth (50<sup>th</sup>), and sixtieth (60<sup>th</sup>) years.

PERFORMANCE BOND:

Twice the annual base rent amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." (See **Exhibit B**)

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO <u>  </u>
Registered business name confirmed:	YES <u> x </u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u> x </u>	NO <u>  </u>

APPLICANT REQUIREMENTS:

None.

REMARKS:

Pursuant to a public auction held in 1962, GL 3709 was issued to Pacific Foundation for Marine Research, a domestic non-profit corporation for the purposes noted above. Oceanic Institute ("OI") became the lessee subsequently and continued to operate the research facility at the location. Sea Life Park (sublessee) and Gloria Bridal Services, Inc. (sub-sublessee) operating the theme park and the wedding chapel respectively at the location have received the Board's consent to the sublease and sub-sublease.

Hawaii Pacific University ("HPU") and OI are affiliated entities and they are planning to undergo a merger between them. Upon the merger, HPU will emerge as the sole entity and OI will only retain its trade name. HPU will assume the role of the lessee of the leased premises. Nevertheless, the forthcoming expiration date of 2027 for GL 3709

creates certain limitations on HPU in securing future grants and donations. Therefore, HPU decided to request a new 65-year lease from the Board to facilitate the continuation of the marine research activities. It is anticipated that the merger will be finalized before the issuance of the new lease. Therefore, staff recommends the Board consent to the merger for housekeeping purposes.

HPU is not planning to conduct any major improvement with the exception of normal wear and tear repair to the existing improvements. For any future improvements planned for the facility which may trigger other regulatory requirements, e.g. environmental assessment, conservation district use permit, HPU is aware that they have to comply with those permit requirements. Same situation also applies to Sea Life Park and Global Bridal Services, Inc.

**Exhibit C and D** are the lists of achievements accomplished and federal and State grants received by OI respectively.

Staff understands there are pipelines under and across Kaupo Beach Park and the Kalanianaʻole Highway connecting the current facilities for intake and discharge of sea water as allowed in the existing lease since its commencement in 1962. However, the pipelines are not shown on the existing map for GL 3709. In March 2003, the Kaupo Beach Park was transferred to the Department of Hawaiian Home Lands while the abutting portions of Kalanianaʻole Highway were set aside in 2006 to the Department of Transportation (“DOT”) pursuant to Governor’s Executive Order No. 4177 for roadway improvement purposes. Upon approval of today’s request, HPU will approach the respective agencies for authorization to continue using the pipelines.

In addition, OI is the lessee of a 40-foot wide strip of land within EO 4177 currently managed by DOT. The lease (“Lease 234”) allows for landscaping with no buildings or structures permitted. Similar to the preceding paragraph, HPU will approach DOT regarding Lease 234 for future disposition, for example, assignment or re-issuance of new lease.

Pursuant to 171-43.1, HRS, “[t]he board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.” Applicant has provided evidence of 501(c)(3) status in the file.

#### Sublease and Sub-sublease

In the past, the Board has given its consent to the sublease [for Sea Life Park] and sub-sublease [for Global Bridal Services, Inc.] on the premises. Staff recommends the Board in granting approval for today’s request, if applicable, require the new lease be subject to the sublease and sub-sublease until their original expiration dates or otherwise

renegotiated. HPU is in the process of obtaining written consent from the sublessee and sub-sublessee to the proposed mutual termination and issuance of new lease.

Comments from agencies

Department of Planning and Permitting notes that portion of the requested location is located in the Special Management Area, and any future improvements will be subject to the review for compliance regarding the applicable ordinance. They have no objection to the issuance of a new lease at this moment.

Board of Water Supply requires the lease be subject to access by BWS to all its facilities within the subject parcel.

Office of Conservation and Coastal Lands reminded Applicant of the need of consultation for any land use requirement. Since HPU is not planning on any new land use requirement now, and HPU is aware of the need for consultation for future land use requirement.

Department of Facility Maintenance, Division of State Parks, Department of Parks and Recreation, Division of Aquatic Resources, Department of Health have no comment or objection to the request.

Department of Hawaiian Home Lands, State Historic Preservation Division, Commission on Water Resource Management, and Office of Hawaiian Affairs have not responded to the solicitation for comment at the of writing this submittal.


Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

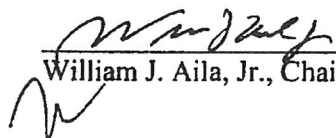
1. Consent to the merger of Oceanic Institute and Hawaii Pacific University pertaining to General Lease No. 3709 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. Review and approval by the Department of the Attorney General; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

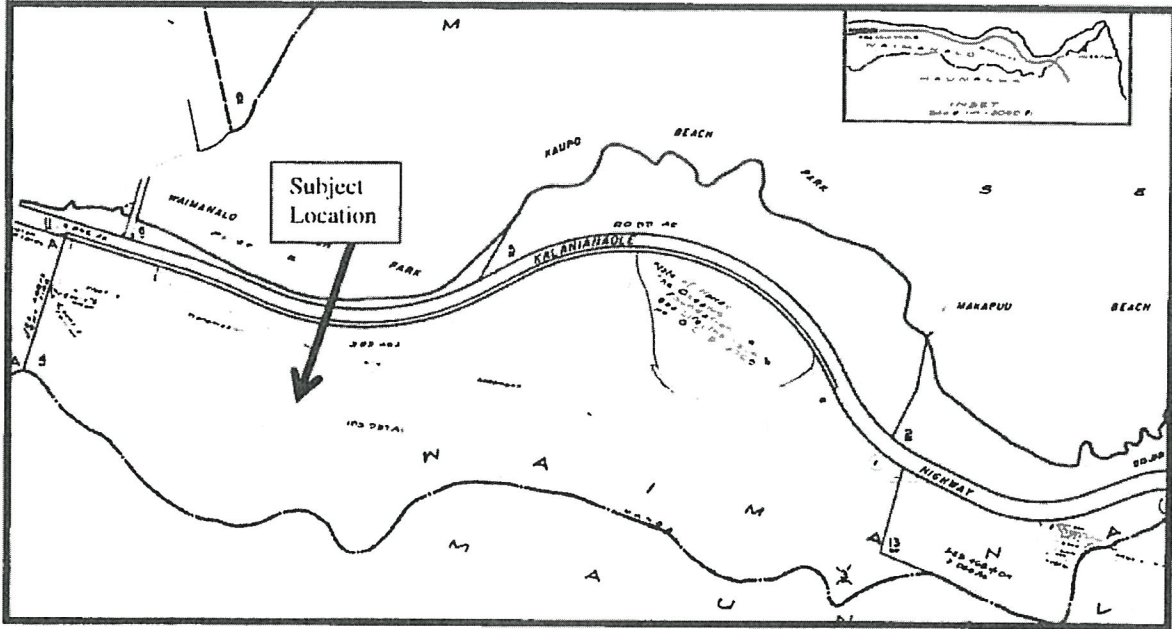
3. Authorize the mutual termination of General Lease No. 3709 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current mutual cancellation form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Hawaii Pacific University covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current (non-profit) lease document form, as may be amended from time to time;
  - B. The lease shall be subject to the existing sublease and sub-sublease entered into by the Lessee and approved by the Lessor pursuant to General Lease No. 3709 and which sublease and sub-sublease shall remain in full force and effect (provided that the new lease to HPU also remains in effect), or until such time as the sublease and sub-sublease are earlier terminated, expired, or otherwise renegotiated;
  - C. Subject to access to Board of Water Supply facilities on the premises;
  - D. Review and approval by the Department of the Attorney General; and
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson



**TMK (1) 4-1-014:004**

**EXHIBIT A**

### EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Direct Issuance of Lease for Scientific Research and Public Exhibiting Facilities of Marine Life

Project / Reference No.: PSF 13OD-121

Project Location: Waimanalo, Koolauoko, Oahu, Tax Map Key: (1) 4-1-014:004

Project Description: Issuance of a new lease on the existing facilities.


Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Agencies as noted in the submittal

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson  
Date 9/27/13

## EXHIBIT B

## Oceanic Institute Achievements

### Local Impacts

- 1) Developed hatchery and nursery technologies for the Pacific threadfin (moi) resulting in the establishment of the nation's first commercial off-shore cage operation on the island of O'ahu.
- 2) Provided fish eggs, fish fingerlings, shrimp postlarvae, live algae, feed, information, and training to local farmers to assist Hawaii aquaculture businesses.
- 3) Mentored and supported local volunteers, interns, undergraduate students, and graduate students in aquaculture-related sciences to help career decisions and development.
- 4) Provided selectively bred shrimp to local companies resulting in a multi-million dollar per year shrimp broodstock industry in Hawaii which is highly regarded worldwide.
- 5) Conducted training and education workshops and provided fish fingerlings across the islands for Hawaiian fishpond revitalization projects and to inspire local Hawaiian youths to become interested in aquaculture as a cultural legacy.
- 6) Developed ground-breaking technologies to rear copepods which serve as live feed for difficult-to-rear fish species in Hawaii.
- 7) Advanced the knowledge base for the captive reproduction of marine ornamental fish, such as yellow tang and flame angelfish, to help conserve these valuable species inhabiting Hawaii's coral reefs.
- 8) Developed tag-and release technologies and protocols for the stock enhancement of mullet and moi in Hawaii's nearshore waters.
- 9) Plans to build and operate a pilot-scale feed mill in Hilo to test novel feed ingredients, including agriculture and fisheries by-products, for Hawaii's terrestrial animal and aquaculture farmers.

### National Impacts

- 1) Maintains a permanent seat on the Aquaculture Committee for the American Feeds Industry Association, the largest organization representing the U.S. animal feeds industry.

**EXHIBIT "C"**

- 2) Collaborated with the U.S. Department of Agriculture, Agriculture Research Service, to develop aquatic feed ingredients using products and by-products from the Alaskan fisheries to assist long-term sustainability of federal marine resources.
- 3) Led administrative and key research roles in a 7-state consortium to develop shrimp farming in the U.S., funded by the U.S. Department of Agriculture, U.S. Marine Shrimp Farming Program.
- 4) With partners from Mississippi and Florida, developed preliminary captive production and stock replenishment technologies for the red snapper for restocking efforts in the Gulf of Mexico.
- 5) With partners from Hawaii, was the first to demonstrate the feasibility of open-ocean aquaculture in the U.S., setting the stage for follow-up research with commercial projects nationwide.

#### International Impacts

- 1) Introduced the concept of biosecurity, including the use of specific pathogen free (SPF) animals, to shrimp aquaculture, resulting in the global adoption of these strategies to a multi-billion dollar per year industry.
- 2) Played a significant role in changing the dominant shrimp species cultured worldwide from the giant tiger prawn to the Pacific white shrimp. In fact, much of the world's farmed shrimp can trace their genetic origins back to OI's shrimp breeding program.
- 3) Written and published manuals for intensive shrimp production and hatchery operations for milkfish, striped mullet, and Pacific threadfin (moi). These manuals are used by researchers and commercial farmers all over the world and have helped solidify OI's role as a world leader in aquaculture research and development.
- 4) Transferred milkfish hatchery technologies to milkfish-farming countries such as Taiwan, Indonesia, and the Philippines.
- 5) Constructed the first marine fish hatchery in Egypt and trained local technicians for sea bream, sea bass, and striped mullet culture.

**OCEANIC INSTITUTE**  
**Current Federal and State Grant Listing**  
**As of 5/23/13**

Agency	CFDA No.	Grant Title	Program Manager	Period of Award		Award Amount
				Start	End	
<b>USDA Agriculture Research Services:</b>						
USDA-ARS	10.001	Tropical Aquaculture: Develop Feeds for Optimum Nutrition of Cultureed Shrimp and Finfish	Warren Dominy	09/29/08	09/28/09	1,002,264
			Warren Dominy	09/29/09	09/28/10	921,171
			Dong-Fang Deng	09/29/10	09/18/13	921,171
						2,844,606
<b>USDA National Institute of Food and Agriculture:</b>						
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 22 & 23)	Cheng-Sheng Lee	09/01/08	08/31/09	735,379
				09/01/09	08/31/12	735,322
						1,470,701
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 24 & 25)	Cheng-Sheng Lee	08/01/10	07/31/11	735,321
				08/01/11	07/31/15	733,851
						1,469,172
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 26)	Cheng-Sheng Lee	08/01/12	07/31/16	733,071
USDA-NIFA	10.218	Center for Applied Aquaculture - CAA 1995	Randy Honke	04/01/98	12/31/15	2,252,368
<b>USDC Economic Development Administration:</b>						
USDOC EDA	11.300	OLC Annex	Randy Honke	05/19/08	09/30/13	1,500,000
<b>USDA National Institute of Food and Agriculture - Passthrough, Pacific Biodesal:</b>						
USDA-NIFA	10.212	Alna Mo Soil Amendment Project Year 2	Dong-Fang Deng	09/01/11	08/31/13	143,508
<b>USDA National Institute of Food and Agriculture - Passthrough/CI CTSA Grant (Internal Subcontract):</b>						
USDA-NIFA	10.200	Aquaculture of Opihi	Dong-Fang Deng	04/02/12	08/31/13	50,000
USDA-NIFA	10.200	Regional Aquaculture Info. Service for Education Yr6	Meredith Brooks	05/01/12	07/31/13	59,700
USDA-NIFA	10.200	Development of Diets for Hawaii Cultured Abalone	Dong-Fang Deng	06/18/12	06/17/13	73,000
<b>State of Hawaii:</b>						
SOH-DLNR	**	Feedmill Laboratory Project	Randy Honke	11/09/00	12/31/12	804,000
SOH-DAG	**	Feedmill: Livestock Feasibility Project/Agr/Dev Food Security	Randy Honke	02/01/13	06/30/14	450,000

**EXHIBIT "D"**

**OCEANIC INSTITUTE**  
**Current Federal and State Grant Listing**  
**Fiscal Year 2012**

Agency	CFDA No.	Grant Title	Program Manager	Period of Award		Award Amount
				Start	End	
<b>USDA Agriculture Research Services:</b>						
USDA-ARS	10.001	Tropical Aquaculture: Develop Feeds for Optimum Nutrition of Cultured Shrimp and Finfish	Warren Dominy	09/29/08	09/28/09	1,002,264
				09/29/09	09/28/10	921,171
				09/29/10	09/18/13	921,171
						2,844,606
<b>USDA Agriculture Research Services - Passthrough University of Alaska:</b>						
USDA-ARS	10.001	Alaska Fisheries Byproduct Utilization Program - Feed Supplements from Fish/Coordination	Warren Dominy	09/22/09	09/30/10	235,007
				09/22/10	09/22/11	225,000
				10/01/11	09/30/12	200,000
						660,007
<b>USDA Payback - Unfunded Research:</b>						
USDA-ARS	**	Pacific Threadfin Broodstock Maintenance and Fingerling Production	Charles Laidley	01/01/11	12/31/11	107,085
<b>USDA National Institute of Food and Agriculture:</b>						
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 20)	Cheng-sheng Lee	08/01/06	07/31/11	735,381
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 21)	Cheng-sheng Lee	08/01/07	07/31/12	735,377
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 22 & 23)	Cheng-sheng Lee	09/01/08	08/31/09	735,379
				09/01/09	08/31/12	735,322
						1,470,701
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 24 & 25)	Cheng-sheng Lee	08/01/10	07/31/11	735,321
				08/01/11	07/31/15	733,851
						1,469,172
USDA-NIFA	10.200	Gulf Coast Shrimp Project	Shaun Moss	08/01/10	07/31/11	2,117,540
USDA-NIFA	10.200	Gulf Coast Shrimp Project	Shaun Moss	08/01/09	07/31/12	2,118,240
USDA-NIFA	10.218	Center for Applied Aquaculture - CAA 1988	Randy Honke	09/01/88	03/31/11	7,404,952
USDA-NIFA	10.218	Center for Applied Aquaculture - CAA 1995	Randy Honke	04/01/98	12/31/12	2,252,368
<b>USDA National Institute of Food and Agriculture - Passthrough Pacific Bioreesel:</b>						
USDA-NIFA	10.212	Alna Mo Soil Amendment Project Year 2	Warren Dominy	09/01/11	08/31/13	143,508
<b>USDC Economic Development Administration:</b>						
USDC-EDA	11.300	OLC Annex	Randy Honke	05/19/08	05/18/13	1,500,000
<b>USDC National Oceanic and Atmospheric Administration:</b>						
USDC-NOAA	11.417	Hawaii Sustainable Fisheries Development 08-09	Charles Laidley	07/01/08	06/30/11	550,000
USDC-NOAA	11.444	Hawaii Sustainable Fisheries Development 09-10	Charles Laidley	09/01/09	08/30/11	730,518
USDC-NOAA	11.444	Hawaii Sustainable Fisheries Development 10-11	Charles Laidley	09/01/10	08/31/12	399,600
USDC-NOAA	11.452	Aquaponics - 2010 Marine Education	Meredith Brooks	06/01/10	12/31/11	14,950
<b>National Science Foundation:</b>						
NSF	47.050	CAMEO 2009	Carrie Holl	08/15/10	07/31/13	95,304
<b>State of Hawaii:</b>						
SOH-DLNR	**	Feed Mill Laboratory Program	Randy Honke	11/29/00	12/31/13	804,000

**OCEANIC INSTITUTE  
GRANT & CONTRACT AWARDS LISTING  
Fiscal Year 2011**

			Award	Project Period	
<b><u>Federal Grants</u></b>					
USDA CSREES	USDA CAA - FY1988	***	\$3,529,952.00	09/01/88	03/31/11
USDA CSREES	USDA CAA - FY1995		\$2,252,368.00	04/15/98	12/31/11
USDOC EDA	OLC Annex		\$1,500,000.00	05/19/08	05/18/13
USDA CSREES	CTSA Year 19		\$742,809.00	08/01/05	07/31/10
USDA CSREES	CTSA Year 20		\$735,381.00	08/01/06	07/31/11
USDA CSREES	CTSA Year 21		\$735,377.00	08/01/07	07/31/11
USDA CSREES	CTSA Year 22 & 23		\$1,470,701.00	09/01/08	08/31/12
USDA CSREES	CTSA Year 24		\$735,321.00	08/01/10	07/31/14
USDA CSREES	Shrimp Consortium		\$2,254,222.00	08/01/08	07/31/10
USDA CSREES	Shrimp Consortium		\$2,117,540.00	08/01/09	07/31/11
USDA CSREES	Shrimp Consortium		\$2,118,240.00	08/01/10	07/31/11
USDA	Shrimp Maturation Diet - \$180,000		\$0.00	05/01/05	04/30/10
USDA CSREES	Shrimp Microbial Comm Interaction - \$315,91		\$0.00	12/01/06	11/08/08
USDA ARS Hawaii	Development of Feeds for Optimum Nutrition		\$1,002,264.00	09/29/08	09/18/13
USDA ARS Hawaii	Development of Feeds for Optimum Nutrition		\$921,171.00	09/29/08	09/18/13
USDOC NOAA	HI Sustainable Fisheries Development		\$550,000.00	07/01/08	06/30/11
USDOC NOAA	HI Sustainable Fisheries Dev Project		\$730,518.00	09/01/09	08/31/11
USDOC NOAA	HI Sustainable Fisheries Dev Project		\$399,600.00	09/01/10	08/31/11
USDOC NOAA	Aquaponics - 2010 Marine Education		\$14,950.00	06/01/10	05/30/11
USDOC NOAA	AIP Year 1		\$195,256.00	01/01/07	12/31/11
USDOC NOAA	AIP		\$97,628.00	01/01/08	12/31/10
NSF	CAMEO 2009 - A novel tool for validating..		\$95,304.00	08/15/10	07/31/13
Sub-total Federal Grants			\$22,198,602.00		
<b><u>Pass-through Grants</u></b>					
UNIV of ALASKA	ARS Alaska By-Products FY2008-2009		\$287,970.00	09/30/08	09/29/11
UNIV of ALASKA	ARS Alaska By-Products FY2009-2010		\$282,008.00	09/22/09	09/30/10
UNIV of ALASKA	ARS Alaska By-Products FY2010-2011		\$270,000.00	09/22/10	09/30/11
Pacific Biodiesel	Alna Mo' Soil Amendment		\$26,000.00	08/01/10	02/14/11
Sub-total Pass-through Grants			\$865,978.00		
<b><u>State of Hawaii Contracts</u></b>					
DLNR	47455	Aquatic Feed	\$804,000.00	11/09/00	12/31/10

LJK 1001

BENJAMIN J. CAYETANO  
GOVERNOR  
STATE OF HAWAII



DATE RECEIVED  
OCT 9 9 20 AM '02

RAYNARD C. SOON  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

JOHIE M. K. M. YAMAGUCHI  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P.O. BOX 1879  
HONOLULU, HAWAII 96805

September 30, 2002

To: The Honorable Gilbert S. Coloma-Agaran, Chairman  
Board of Land and Natural Resources

From: *[Signature]*  
Raynard C. Soon, Chairman  
Hawaiian Homes Commission

Subject: Resolution of Department of Hawaiian Home Lands (DHHL)  
Land Title and Related Claims, Waimanalo Regional  
Settlement, Act 14, SpSLH 1995

RECEIVED  
OCT 10 3 58 PM '02  
DEPT. OF TRANSPORTATION  
REGISTRATION DIVISION

The purpose for this memorandum is to provide you with an update on the approved actions of the Hawaiian Homes Commission (HHC) at its April 23, 2002, and June 25, 2002, meetings regarding the resolution of the DHHL Land and Related Claims, Waimanalo Regional Settlement, Act 14, SpSLH 1995 (Act 14). Copies of the submittals are enclosed for your reference.

On April 23, 2002, the HHC approved a motion to withdraw its claims to twelve (12) parcels identified in Exhibit "A" of Item No. E-2. The withdrawal is subject to the transmittal of fully executed quitclaim deeds by the Department of Land and Natural Resources (DLNR) to DHHL for the:

- a. Residential Lots (TMK 4-1-16 and 17);
- b. Beach Lands (TMK 4-1-2: All and 4-1-14: 2, 5, and 6);  
and
- c. Other Lands Within This Area (TMK 4-1-2: 1; 4-1-14: 7, 8; 4-1-19: All; 4-1-20: All; 4-1-29: 74 to 108; and 4-1-31: 18 to 28).

On June 25, 2002, the HHC approved a motion to withdraw its claims to 8.5 acres of land alienated to private parties and the Kalaniana'ole Highway right-of-way in Waimanalo, subject to DHHL receiving first choice in the selection of 200 acres at Bellows Air Force Base (Bellows AFB) upon the return of such land to the State and the transmittal of the fully executed quitclaim deed

EXHIBIT "2"  
*[Signatures]*  
MSG

The Honorable Gilbert S. Coloma-Agaran  
September 26, 2002  
Page 2

by DLNR to DHHL of approximately 12.18 acres of State land at Waimanalo Beach Park.

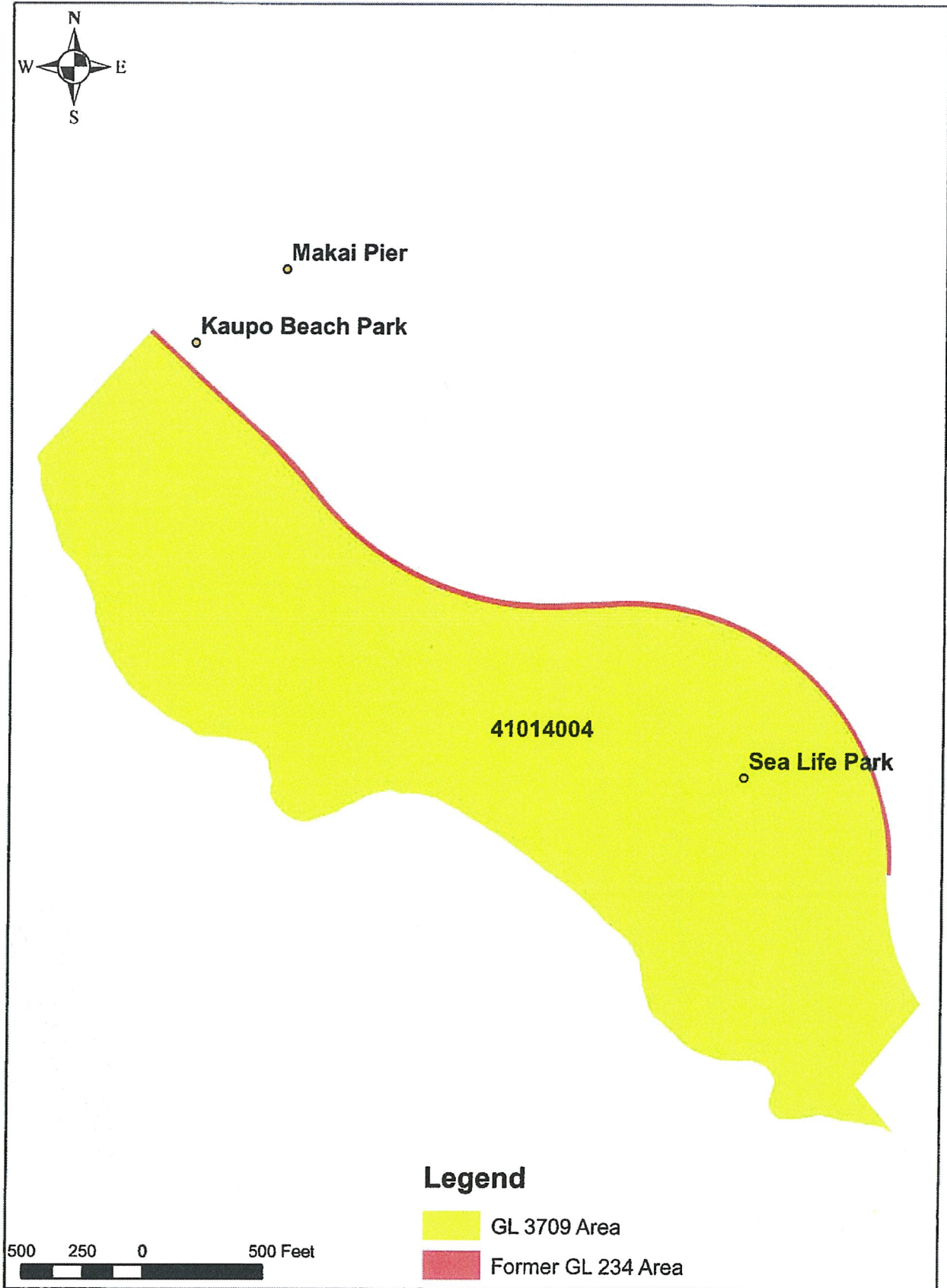
It is our understanding that the resolution of this matter is a priority for the Governor and the Department of Transportation (DOT) with respect to the rock sliding concerns along Kalaniana'ole Highway. We are hopeful that DOT will consider the HHC-approved actions and will work with DHHL with respect to its Roads and Highways Resolution as reflected in Act 14.

Thank you for your assistance in this matter. Should you have any questions, please call me at 586-3801, or have your staff contact Elmer K. Ka'ai of our Planning Office at 586-3836.

Enc. (2)

c: ✓ The Honorable Brian K. Minaai, Director  
Department of Transportation

# HPU New Lease



# EXHIBIT 3

# EXHIBIT B-1

R-916

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JAN 12, 2001 03:00 PM

DOC No(s) 2001-005746

/S/ CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

Return by Mail ( ) Pickup (✓) To: 521-9200

BL  
CADES SCHUTTE FLEMING & WRIGHT  
P.O. Box 939  
Honolulu, Hawaii 96808

Total No. of Pages: 11

Tax Map Key: (1) 4-1-014-004

COVENANT OF PURPOSE, USE AND OWNERSHIP  
(Information Technology and Training Center)

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this 21<sup>st</sup> day of November, 2000 by THE OCEANIC INSTITUTE, a Hawaii non-profit corporation whose address is 41-202 Kalaniana'ole Highway, Waimanalo, Hawaii 96795 (hereinafter with its successors and assigns called "Recipient"), in favor of the ECONOMIC DEVELOPMENT ADMINISTRATION, UNITED STATES OF AMERICA, whose address is Main Commerce Building, Washington, D.C. 20230 (hereinafter with its successors and assigns called "EDA");

RECITALS:

WHEREAS, Recipient submitted an application, designated as EDA Project No. 07-01-04868, for financial assistance pursuant to the Public Works and Economic Development Act, as amended (42 U.S.C. 3141, et seq.), (hereinafter the "Act"); and

WHEREAS, by offer of Award, dated September 29, 2000, EDA offered to Recipient a financial assistance award in the amount of \$1,000,000.00 (hereinafter called "Award Amount") to assist in financing an Information Technology and Training Facility (hereinafter called "Project"); and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements thereon called "Property"); and

**EXHIBIT "B-1"**

WHEREAS, on October 9, 2000, Recipient accepted the Offer of Award (hereinafter called "Award Agreement") subject to certain terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 13 Code of Federal Regulations, Part 314; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefor (hereinafter called "Project Purposes"), such alienation and use being prohibited by 13 CFR Part 314 and 15 CFR Part 24, and 15 CFR Part 14; and

WHEREAS, under the authority of the Act, EDA is not authorized to permit Recipient to use the Property for purposes other than the Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from EDA, unless EDA is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient, as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A" attached hereto; and

WHEREAS, the Bureau of Conveyances of the State of Hawaii located at 1151 Punchbowl Street, Honolulu, Hawaii 96813 with mailing address at P.O. Box 2867, Honolulu, Hawaii 96803 is the proper office to record this Covenant;

NOW, THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the Project is twenty (20) years as determined by EDA.
2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with the funds made available through this Award, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Assistant Secretary, Economic Development Administration or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to EDA the amount of the award funds disbursed or, at the option of the EDA, the federal government's fair share of the Property as provided in the Code of Federal Regulations, Title 13, Part 314. The federal government's fair share of the Property shall be the amount computed by multiplying the percentage of the federal participation in the total cost of the grant program to the fair market value of the Property at the time of the unauthorized use or conveyance of the Property.

3. Recipient further covenants that in the event the Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed or mortgaged without the prior written approval of the Assistant Secretary, Recipient will compensate the federal government in the amount of the grant funds disbursed or at the option of the federal government, the federal government's fair share of the Property as described above.

4. Pursuant to 13 CFR 314, Recipient further agrees that, as a prerequisite to accepting the disbursement of any award funds by EDA, Recipient shall execute and place on record against the property acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the Property is sold, leased or otherwise conveyed pursuant to the Code of Federal Regulations, Title 13, Part 314, Recipient or the transferor shall add to the document conveying such interest a Covenant or Purpose, Use and Ownership. EDA may require an opinion of counsel for Recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the federal interest expressed herein.

6. This Covenant shall run with the land.

IN WITNESS WHEREOF, the Recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to EDA.

THE OCEANIC INSTITUTE

By Thomas E. Farrell

Its President & CEO

Recipient

ATTEST:

By Esme Harke

Title Corporate Secretary

This completed, executed and recorded covenant received and accepted by EDA this  
\_\_\_\_\_ day of \_\_\_\_\_.

By \_\_\_\_\_

covenant

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 21<sup>ST</sup> day of November, 2000, before me appeared Thomas E. Farewell, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

L. S.

Signature: Margaret R. Kapuakela  
Print Name: Margaret R. Kapuakela  
Notary Public, State of Hawaii

My commission expires: 08/09/01

**EXHIBIT A**

That portion of the following described land which is at any time during the term of the foregoing covenant occupied by any of the improvements for the Project including, without limitation, the training facility building, central courtyard and saltwater tank, said portion of the land and all improvements thereon being referred to as the "Property". The Property is a portion of that certain parcel of land situated at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, comprising Tax Map Key 4-1-014-004 (1), being a portion of the land demised to The Oceanic Institute, a Hawaii non-profit corporation (formerly Pacific Foundation for Marine Research) by the State of Hawaii, by and through its Board of Land and Natural Resources, by General Lease No. S-3709, containing approximately 56.338 acres more or less, and being the following described premises less the premises described in Exhibit B-1 attached hereto.

All of that certain parcel of land situate, lying and being at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, being the Government Land of Waimanalo, comprising Tax Map Keys 4-1-014-004 (1) and 4-1-014-013 (1), and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunaloa and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west, as shown on Government Survey Registered Map 2832, thence running by azimuths measured clockwise from true South:

Along top of main ridge of Koolau Range, along L.C.Aw. 7713 Apana 30 to V. Kamamalu (Land of Maunaloa) for the next 12 courses, the direct azimuths and distances between points on said main ridge being:

1.	92°	09'	483.40	feet;
2.	59°	35'	500.00	feet;
3.	136°	55'	690.00	feet;
4.	96°	55'	490.00	feet;
5.	159°	00'	250.00	feet;
6.	109°	50'	370.00	feet;
7.	155°	45'	350.00	feet;
8.	127°	15'	1,100.00	feet;
9.	81°	15'	580.00	feet;
10.	150°	20'	370.00	feet;

11. 109° 10' 380.00 feet;
12. 154° 20' 1,180.00 feet;
13. 223° 04' 684.66 feet along the remainder of the Hawaiian Home Land of Waimanalo;
14. 313° 04' 557.15 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
15. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 2,799.93 feet, the chord azimuth and distance being:
  - 316° 32' 338.61 feet;
16. 320° 00' 107.05 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
17. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 1,259.01 feet, the chord azimuth and distance being:
  - 293° 32' 1,122.22 feet;
18. 267° 04' 194.87 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
19. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 1,081.28 feet, the chord azimuth and distance being:
  - 314° 01' 1,580.31 feet;
20. 0° 58' 49.80 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
21. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 884.02 feet, the chord azimuth and distance being:
  - 341° 29' 589.70 feet;
22. 322° 00' 340.41 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
23. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 702.27 feet, the chord azimuth and distance being:
  - 298° 30' 560.06 feet;

EXHIBIT A

24. 275° 00' 256.88 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
25. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 345.28 feet, the chord azimuth and distance being:
- 303° 32' 48" 330.00 feet to the point of beginning and containing an area of 118.0 acres, more or less.

Together with suitable easements under and across Kalaniana'ole Highway and under and across Kaupo Beach Park to the ocean for the pumping and discharge of sea water as required for the operation of the exhibiting and research facilities, such easements to be determined as to size and exact location by engineering requirements and not to exceed the minimum area actually necessary for the purpose; provided, that installation and utilization of such permitted facilities in subject easements shall be effected with the minimum possible interference with the utilization of said Kalaniana'ole Highway and Kaupo Beach Park for their respective purposes and with the approval of the State Department of Transportation, Highways Division, and the City and County of Honolulu.

## EXHIBIT B-1

All of that certain parcel of land situate, lying and being on the southerly side of Kalaniana'ole Highway at Waimanalo, District of Koolau-poko, City and County of Honolulu, State of Hawaii, being a portion of the Government Land at Waimanalo leased to the Oceanic Foundation pursuant to State of Hawaii General Lease No. S-3709, dated October 19, 1962, and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunaloa and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west as shown on Government Survey Registered Map 2832 and running by azimuths measured clockwise from true South:

Following along top of main ridge of Koolau Range, along L. C. Aw. 7713, Apana 30 to V. Kamamalu (Land of Maunaloa) for the next eight (8) courses, the direct azimuths and distances between points being:

1.	92°	09'	483.40	feet;
2.	59°	35'	500.00	feet;
3.	136°	55'	690.00	feet;
4.	96°	55'	490.00	feet;
5.	159°	00'	250.00	feet;
6.	109°	50'	370.00	feet;
7.	155°	45'	350.00	feet;
8.	127°	15'	1100.00	feet;
9.	247°	33'	10"	719.39 feet along Area 2, along remainder of Government Land of Waimanalo;
10.	224°	00'	100.00	feet along Area 2, along remainder of Government Land of Waimanalo;
11.	286°	00'	60.00	feet along Area 2, along remainder of Government Land of Waimanalo;

12.	239°	20'	76.00	feet along Area 2, along remainder of Government Land of Waimanalo;
13.	228°	20'	61.00	feet along Area 2, along remainder of Government Land of Waimanalo;
14.	189°	10'	102.00	feet along Area 2, along remainder of Government Land of Waimanalo;
15.	207°	40'	49.00	feet along Area 2, along remainder of Government Land of Waimanalo;
16.	294°	00'	111.64	feet along Area 2, along remainder of Government Land of Waimanalo;
17.	15°	40'	136.00	feet along Area 2, along remainder of Government Land of Waimanalo;
18.	296°	25'	146.80	feet along Area 2, along remainder of Government Land of Waimanalo;
19.	204°	45'	171.08	feet along Area 2, along remainder of Government Land of Waimanalo;
20.	110°	35'	173.00	feet along Area 2, along remainder of Government Land of Waimanalo;
21.	192°	30'	220.51	feet along Area 2, along remainder of Government Land of Waimanalo;
				Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 1081.28 feet, the chord azimuth and distance being:
22.	322°	38' 30"	1341.05	feet;
23.	00°	58'	49.80	feet along the southwesterly side of Kalaniana'ole Highway;

EXHIBIT B-1

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 884.02 feet, the chord azimuth and distance being:

24. 341° 29' 589.70 feet;

25. 322° 00' 340.41 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 702.27 feet, the chord azimuth and distance being:

26. 298° 30' 560.06 feet;

27. 275° 00' 256.88 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 345.28 feet, the chord azimuth and distance being:

28. 303° 32' 48" 330.00 feet to the point of beginning and containing an area of 61.662 acres, more or less.

# EXHIBIT C-1



R-880 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
NOV 10, 2010 02:00 PM  
Doc No(s) 2010-173241



/s/ NICKI ANN THOMPSON  
REGISTRAR

20 1/1 29

KK

Return by Mail ( ) Pickup (✓) To: 521-9200

BL  
CADES SCHUTTE LLP  
1000 Bishop Street, 12th Floor  
Honolulu, Hawaii 96813

Total No. of Pages: 101

Tax Map Key: (1) 4-1-014-004

COVENANT OF PURPOSE, USE AND OWNERSHIP  
(Oceanic Learning Center)

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this 5<sup>th</sup> day of November, 2010 by THE OCEANIC INSTITUTE, a Hawaii non-profit corporation whose address is 41-202 Kalaniana'ole Highway, Waimanalo, Hawaii 96795 (hereinafter with its successors and assigns called "Recipient"), in favor of the ECONOMIC DEVELOPMENT ADMINISTRATION, UNITED STATES OF AMERICA, whose address is Main Commerce Building, Washington, D.C. 20230 (hereinafter with its successors and assigns called "EDA"):

RECITALS:

WHEREAS, Recipient submitted an application, designated as EDA Project No. 07-01-06170, for financial assistance pursuant to the Public Works and Economic Development Act, as amended (42 U.S.C. 3141, et seq.), (hereinafter the "Act"); and

WHEREAS, by offer of Award, dated May 19, 2008, EDA offered to Recipient a financial assistance award in the amount of \$1,500,000.00 (hereinafter called "Award Amount") to assist in financing the Oceanic Learning Center (hereinafter called "Project"); and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements thereon called "Property"); and

**EXHIBIT "C-1"**

WHEREAS, on May 28, 2008, Recipient accepted the Offer of Award (hereinafter called "Award Agreement") subject to certain terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 13 Code of Federal Regulations, Part 314; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefor (hereinafter called "Project Purposes"), such alienation and use being prohibited by 13 CFR Part 314 and 15 CFR Part 24, and 15 CFR Part 14; and

WHEREAS, under the authority of the Act, EDA is not authorized to permit Recipient to use the Property for purposes other than the Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from EDA, unless EDA is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient, as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A" attached hereto; and

WHEREAS, the Bureau of Conveyances of the State of Hawaii located at 1151 Punchbowl Street, Honolulu, Hawaii 96813 with mailing address at P.O. Box 2867, Honolulu, Hawaii 96803 is the proper office to record this Covenant;

NOW, THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the Project is nineteen (19) years as determined by EDA.
2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with the funds made available through this Award, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Assistant Secretary, Economic Development Administration or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to EDA the amount of the award funds disbursed or, at the option of the EDA, the federal government's fair share of the Property as provided in the Code of Federal Regulations, Title 13, Part 314. The federal government's fair share of the Property shall be the amount computed by multiplying the percentage of the federal participation in the total cost of the grant program to the fair market value of the Property at the time of the unauthorized use or conveyance of the Property.

3. Recipient further covenants that in the event the Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed or mortgaged without the prior written approval of the Assistant Secretary, Recipient will compensate the federal government in the amount of the grant funds disbursed or at the option of the federal government, the federal government's fair share of the Property as described above.

4. Pursuant to 13 CFR 314, Recipient further agrees that, as a prerequisite to accepting the disbursement of any award funds by EDA, Recipient shall execute and place on record against the property acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the Property is sold, leased or otherwise conveyed pursuant to the Code of Federal Regulations, Title 13, Part 314, Recipient or the transferor shall add to the document conveying such interest a Covenant or Purpose, Use and Ownership. EDA may require an opinion of counsel for Recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the federal interest expressed herein.

6. This Covenant shall run with the land.

IN WITNESS WHEREOF, the Recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to EDA.

THE OCEANIC INSTITUTE

By   
ANTHONY C. OSTROWSKI  
Its PRESIDENT

Recipient

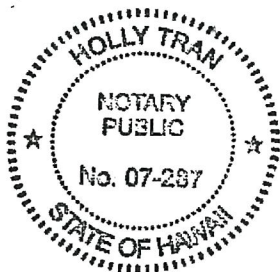
ATTEST:

By \_\_\_\_\_

Title \_\_\_\_\_

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 5th day of November 2010, before me appeared Anthony e Ostrowski, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and, if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

Signature: [Handwritten Signature]  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: HOLLY TRAN  
NOTARY PUBLIC, FIRST JUDICIAL CIRCUIT  
STATE OF HAWAII  
COMMISSION EXPIRES 6/17/2011

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Covenant of Purpose, Use and Ownership (Oceanic Learning Center)

Doc. Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: 11 Jurisdiction: First Circuit  
(in which notarial act is performed)

Signature of Notary [Handwritten Signature] Date of Notarization and Certification Statement 11/05/10

HOLLY TRAN  
NOTARY PUBLIC, FIRST JUDICIAL CIRCUIT  
STATE OF HAWAII  
COMMISSION EXPIRES 6/17/2011  
Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT A

That portion of the following described land which is at any time during the term of the foregoing covenant occupied by any of the improvements for the Project including, without limitation, the learning center building, said portion of the land and all improvements thereon being referred to as the "Property". The Property is a portion of that certain parcel of land situated at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, comprising Tax Map Key 4-1-014-004 (1), being a portion of the land demised to The Oceanic Institute, a Hawaii non-profit corporation (formerly Pacific Foundation for Marine Research) by the State of Hawaii, by and through its Board of Land and Natural Resources, by General Lease No. S-3709, containing approximately 56.338 acres more or less, and being the following described premises less the premises described in Exhibit B-1 attached hereto.

All of that certain parcel of land situate, lying and being at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, being the Government Land of Waimanalo, comprising Tax Map Keys 4-1-014-004 (1) and 4-1-014-013 (1), and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunaloa and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west, as shown on Government Survey Registered Map 2832, thence running by azimuths measured clockwise from true South:

Along top of main ridge of Koolau Range, along L.C.Aw. 7713 Apana 30 to V. Kamamalu (Land of Maunaloa) for the next 12 courses, the direct azimuths and distances between points on said main ridge being:

1.	92°	09'	483.40	feet;
2.	59°	35'	500.00	feet;
3.	136°	55'	690.00	feet;
4.	96°	55'	490.00	feet;
5.	159°	00'	250.00	feet;
6.	109°	50'	370.00	feet;
7.	155°	45'	350.00	feet;
8.	127°	15'	1,100.00	feet;
9.	81°	15'	580.00	feet;
10.	150°	20'	370.00	feet;
11.	109°	10'	380.00	feet;

12. 154° 20' 1,180.00 feet;
13. 223° 04' 684.66 feet along the remainder of the Hawaiian Home Land of Waimanalo;
14. 313° 04' 557.15 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
15. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 2,799.93 feet, the chord azimuth and distance being:  
316° 32' 338.61 feet;
16. 320° 00' 107.05 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
17. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 1,259.01 feet, the chord azimuth and distance being:  
293° 32' 1,122.22 feet;
18. 267° 04' 194.87 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
19. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 1,081.28 feet, the chord azimuth and distance being:  
314° 01' 1,580.31 feet;
20. 0° 58' 49.80 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
21. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 884.02 feet, the chord azimuth and distance being:  
341° 29' 589.70 feet;
22. 322° 00' 340.41 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
23. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 702.27 feet, the chord azimuth and distance being:  
298° 30' 560.06 feet;
24. 275° 00' 256.88 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);

EXHIBIT A

25. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 345.28 feet, the chord azimuth and distance being:

303°      32' 48"      330.00      feet to the point of beginning and containing an area of 118.0 acres, more or less.

Together with suitable easements under and across Kalaniana'ole Highway and under and across Kaupo Beach Park to the ocean for the pumping and discharge of sea water as required for the operation of the exhibiting and research facilities, such easements to be determined as to size and exact location by engineering requirements and not to exceed the minimum area actually necessary for the purpose; provided, that installation and utilization of such permitted facilities in subject easements shall be effected with the minimum possible interference with the utilization of said Kalaniana'ole Highway and Kaupo Beach Park for their respective purposes and with the approval of the State Department of Transportation, Highways Division, and the City and County of Honolulu.

**EXHIBIT B-1**

All of that certain parcel of land situate, lying and being on the southerly side of Kalaniana'ole Highway at Waimanalo, District of Koolau-poko, City and County of Honolulu, State of Hawaii, being a portion of the Government Land at Waimanalo leased to the Oceanic Foundation pursuant to State of Hawaii General Lease No. S-3709, dated October 19, 1962, and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunaloa and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west as shown on Government Survey Registered Map 2832 and running by azimuths measured clockwise from true South:

Following along top of main ridge of Koolau Range, along L. C. Aw. 7713, Apana 30 to V. Kamamalu (Land of Maunaloa) for the next eight (8) courses, the direct azimuths and distances between points being:

1.	92°	09'	483.40	feet;
2.	59°	35'	500.00	feet;
3.	136°	55'	690.00	feet;
4.	96°	55'	490.00	feet;
5.	159°	00'	250.00	feet;
6.	109°	50'	370.00	feet;
7.	155°	45'	350.00	feet;
8.	127°	15'	1100.00	feet;
9.	247°	33'	10"	719.39 feet along Area 2, along remainder of Government Land of Waimanalo;
10.	224°	00'	100.00	feet along Area 2, along remainder of Government Land of Waimanalo;
11.	286°	00'	60.00	feet along Area 2, along remainder of Government Land of Waimanalo;

12.	239°	20'		76.00	feet along Area 2, along remainder of Government Land of Waimanalo;
13.	228°	20'		61.00	feet along Area 2, along remainder of Government Land of Waimanalo;
14.	189°	10'		102.00	feet along Area 2, along remainder of Government Land of Waimanalo;
15.	207°	40'		49.00	feet along Area 2, along remainder of Government Land of Waimanalo;
16.	294°	00'		111.64	feet along Area 2, along remainder of Government Land of Waimanalo;
17.	15°	40'		136.00	feet along Area 2, along remainder of Government Land of Waimanalo;
18.	296°	25'		146.80	feet along Area 2, along remainder of Government Land of Waimanalo;
19.	204°	45'		171.08	feet along Area 2, along remainder of Government Land of Waimanalo;
20.	110°	35'		173.00	feet along Area 2, along remainder of Government Land of Waimanalo;
21.	192°	30'		220.51	feet along Area 2, along remainder of Government Land of Waimanalo;
					Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 1081.28 feet, the chord azimuth and distance being:
22.	322°	38'	30"	1341.05	feet;
23.	00°	58'		49.80	feet along the southwesterly side of Kalaniana'ole Highway;

**EXHIBIT B-1**

				Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 884.02 feet, the chord azimuth and distance being:
24.	341°	29'	589.70	feet;
25.	322°	00'	340.41	feet along the southwesterly side of Kalaniana'ole Highway;
				Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 702.27 feet, the chord azimuth and distance being:
26.	298°	30'	560.06	feet;
27.	275°	00'	256.88	feet along the southwesterly side of Kalaniana'ole Highway;
				Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 345.28 feet, the chord azimuth and distance being:
28.	303°	32'	48"	330.00
				feet to the point of beginning and containing an area of 61.662 acres, more or less.

# EXHIBIT D-1

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AFTER RECORDATION, RETURN BY Mail ( ) Pickup ( )

Total Pages: \_\_\_\_\_

TMK NOS.: (1) 4-1-014:004 and 011

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### AGREEMENT AND MORTGAGE

WHEREAS, HAWAI'I PACIFIC UNIVERSITY, a Hawaii non-profit corporation (hereinafter "**Mortgagor**"), whose address is 1164 Bishop Street, Suite 800, Honolulu, Hawaii 96813, is the successor by merger to The Oceanic Institute, a Hawaii non-profit corporation (hereinafter "**OI**").

WHEREAS, OI previously applied to, received and accepted from the UNITED STATES DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION (hereinafter "**EDA**"), the address of which is Main Commerce Building, Washington, D.C. 20230, two awards described as follows:

1. An award in the amount of One Million Dollars (\$1,000,000.00) (hereinafter "**First Award Amount**") pursuant to a Financial Assistance Award (hereinafter "**First Award Agreement**") accepted by OI on October 9, 2000, and bearing EDA Project Number 07-01-04868 (hereinafter "**First Project**"). Pursuant to the application (hereinafter "**First Award Application**") filed by OI requesting said award and pursuant to the First Award Agreement, the First Award Amount was used for the purpose of assisting in the financing of improvements consisting of a training facility building, central courtyard and saltwater tank (hereinafter "**ITT Improvements**") on a portion of the real property leased pursuant to an original ground lease dated October 21, 1962, which original ground lease by mesne assignment was assigned to Mortgagor and which is currently leased to Mortgagor pursuant to a new ground lease dated \_\_\_\_\_, 2017 but effective as of January 1, 2015 (hereinafter "**Ground Lease**") which runs until December 31, 2079, which Ground Lease demises the property described in Exhibit A attached hereto and made a part hereof. The Mortgagor's interest in and to the ITT Improvements together with the Mortgagor's

**EXHIBIT "D-1"**

interest as lessee under the Ground Lease as to the area described in Exhibit B attached hereto and made a part hereof are hereinafter collectively referred to as the **“ITT Property Interest”**. In connection with the First Award Agreement, OI executed a Covenant of Purpose, Use and Ownership (Information Technology and Training Center) recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-005746 (hereinafter **“ITT Covenant”**), which ITT Covenant is being released concurrently herewith and substituted with this Agreement and Mortgage and a further covenant of use executed by the State of Hawaii as the fee owner of the land demised by the Ground Lease (the **“Fee Owner Nondiscrimination Covenant”**). As provided in the ITT Covenant, the estimated useful life of the ITT Improvements as determined by the EDA was 20 years from December 9, 2003 (i.e., the useful life expires December 9, 2023) (hereinafter **“First Project Useful Life”**).

2. An award in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (hereinafter **“Second Award Amount”** and together with the First Award Amount hereinafter collectively referred to as the **“Total Award Amount”**) pursuant to a Financial Assistance Award (hereinafter **“Second Award Agreement”** and together with the First Award Agreement hereinafter collectively referred to as the **“Award Agreements”**) accepted by OI on May 28, 2008, and bearing EDA Project Number 07-01-06170 (hereinafter **“Second Project”** and together with the First Project hereinafter collectively referred to as the **“Projects”**). Pursuant to the application (hereinafter **“Second Award Application”** and together with the First Award Application hereinafter collectively referred to as the **“Award Applications”**) filed by OI requesting said award and pursuant to the Second Award Agreement, the Second Award Amount was used for the purpose of assisting in the financing of improvements consisting of an oceanic learning center (hereinafter **“OLC Improvements”**) on a portion of the property demised by the Ground Lease. The Mortgagor’s interest in and to the OLC Improvements together with the Mortgagor’s interest as lessee under the Ground Lease as to the area described in Exhibit B attached hereto and made a part hereof are hereinafter collectively referred to as the **“OLC Property Interest”** and together with the ITT Property Interest are hereinafter called the **“Project Property”** as more fully described in Exhibit B attached hereto and made a part hereof. In connection with the Second Award Agreement, OI executed a Covenant of Purpose, Use and Ownership (Oceanic Learning Center) recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-173241 (hereinafter **“OLC Covenant”**), which OLC Covenant is being released concurrently herewith and substituted with this Agreement and Mortgage and the Fee Owner Nondiscrimination Covenant. As provided in the OLC Covenant, the estimated useful life of the OLC Improvements as determined by the EDA was 19 years from April 30, 2013 (i.e., the useful life expires April 30, 2032) (hereinafter **“Second Project Useful Life”**).

WHEREAS, any transfer or conveyance of a project by a recipient of a Financial Assistance Award must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) is

not authorized to permit transfer or conveyance of a project to parties which are not eligible to receive EDA Financial Assistance Awards unless EDA is repaid the Federal Share (as hereinafter defined) or unless the authorized purpose of the EDA Financial Assistance Award was to develop land in order to lease it for a specific use, in which case EDA may authorize the lease(s) of the project if certain conditions are met.

WHEREAS, the Award Agreements provide the authorized purposes for which the Award Amounts may be used while further providing, *inter alia*, that Mortgagor (as successor by merger to OI) will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Project Property (other than by a lease permitted by the Award Agreements), or use the Project Property for purposes other than, and different from, those purposes set forth in the Award Agreements and the Award Applications, such alienation or use being prohibited by 13 C.F.R. part 314, or by 15 C.F.R. parts 14 and 24 as may be amended from time to time (hereinafter the “**Regulations**”).

WHEREAS, the value of said right to repayment under the terms of the Regulations is difficult to establish.

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA’s Federal Share of the Projects in the event that the Project Property is used, transferred or alienated in violation of the Award Agreements or the Regulations.

WHEREAS, this situation presents a unique circumstance regarding the property interests involved and the previously recorded documents which both Mortgagor and EDA now desire to replace.

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on the Mortgagor’s interest under the Ground Lease together with all of the Mortgagor’s interest as a lessee in and to the land leased under the Ground Lease and the Mortgagor’s right, title and interest in and to the improvements located on such land as described in Exhibit A (the “**Leasehold Property**”) to secure a debt that Mortgagor acknowledges shall become due and payable by Mortgagor to EDA upon the use, transfer, or alienation of the Project Property, or interest therein, in violation of the Award Agreements or in violation of the Regulations, as such Award Agreements or Regulations may be amended from time to time. Termination of the Ground Lease, modification of the Ground Lease in a manner that adversely impacts the Project Property, or assignment of the Ground Lease interest are each considered a violation of the Award Agreement unless prior EDA written permission is received. An amendment to the base rent and percentage rent upon reopening under and in accordance with the terms and conditions of the Ground Lease at years 30, 40 and 50 of the Ground Lease is not considered a modification of the Ground Lease that adversely affects the Project Property so long as: (1) the rental amount is for the fair market rental of the leased premises excluding improvements as documented by a local real estate agent or an appraisal or other documentation accepted in writing by EDA and such documentation is submitted to EDA for its records; and (2) a certified statement by the Mortgagor’s Chief Financial Officer or other qualified and authorized representative that such rental amount does not cause the Mortgagor’s expenses to exceed its revenues for the year of the amendment and the following year’s projected budget. The amount of the lien, encumbrance and debt created by this Agreement shall be the Federal

Share. As used herein, “**Federal Share**” shall have the same meaning as in 13 CFR 314.5 and generally means the amount computed by multiplying the percentage of the federal participation in a project to the fair market value of any property attributable to EDA’s participation in the project as of the date of the event with respect to which the Federal Share is being calculated, as determined by EDA pursuant to the Regulations. Upon expiration of both the First Project Useful Life and the Second Project Useful Life, this Agreement and Mortgage may be released with prior EDA permission as required under 13 CFR 314.10, provided that, prior to and as a condition to the release of this Agreement and Mortgage, Mortgagor shall take one of the following actions with respect to each of the ITT Improvements and the OLC Improvements: (1) demolish the applicable improvements, (2) pay to EDA the Federal Share of the applicable improvements, or (3) cause the State of Hawaii, as the fee owner, to record a covenant of use against the fee simple interest in the Project Property similar to the Fee Owner Nondiscrimination Covenant providing that, as to each of the ITT Improvements and the OLC Improvements, unless and until the applicable improvements have been demolished or the Federal Share therefor paid to the EDA, any deed, lease or other transfer by the State of Hawaii of the ITT Improvements and the land underlying those improvements or the OLC Improvements and the land underlying those improvements (as the case may be) will include a restriction prohibiting the use of the applicable land and improvements for inherently religious activities in violation of applicable federal law.

Mortgagor further covenants and agrees as follows:

1. Lease of Project Property:

If the Award Applications and Award Agreements authorize Mortgagor to sublease the Project Property, all sublease arrangements must be consistent with the authorized general and special purpose of the Awards; said sublease arrangements will provide adequate employment and economic benefits for the area in which the Project Property is located; said sublease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed sublessee is providing adequate compensation to Mortgagor for said sublease. Any sublease agreements of the Project Property entered into by Mortgagor shall be subordinate, junior and inferior to this Agreement and Mortgage.

2. Warranty of Title; Charges; Liens:

Mortgagor represents and warrants to EDA that: Mortgagor is the holder and the lawful owner of the Leasehold Property hereby mortgaged, the same being valid and in no way void or voidable; that the Mortgagor’s interest in the Project Property is free and clear of any lien or security interest or encumbrance except for those described in Exhibit A; and that Mortgagor has good right and lawful authority to mortgage and grant a security interest in the Leasehold Property as provided in and by this Agreement and Mortgage subject only to receipt of the written consent of the lessor under the Ground Lease, which written consent has been obtained. Mortgagor shall protect the title and possession of the Project Property, pay when due all lease rents, taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Project Property and preserve and maintain the priority of the lien hereby

created on the Leasehold Property including any improvements hereafter made a part of the Project Property. Mortgagor represents and warrants that the terms and conditions of the Ground Lease are sufficient for the purposes of the EDA project and will not restrict or interfere with the contemplated use or purpose of the Project Property.

3. Hazard Insurance:

Mortgagor shall insure and keep or cause to be kept insured all ITT Improvements and OLC Improvements against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said ITT Improvements and OLC Improvements. Insurance proceeds payable to and/or received by Mortgagor with respect to ITT Improvements and OLC Improvements due to loss shall be applied to restoration or repair of the ITT Improvements and OLC Improvements damaged, provided such restoration or repair is economically feasible, that such restoration or repair is permitted by the Ground Lease, and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the Ground Lease does not permit such restoration or repair or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds payable to and/or received by Mortgagor with respect to the ITT Improvements and OLC Improvements to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds applicable to ITT Improvements and OLC Improvements equal to EDA's award percentage in the total cost of the award program for which the damaged or destroyed ITT Improvements and OLC Improvements was acquired or improved.

4. Preservation and Maintenance of the Project Property:

Mortgagor shall keep the Project Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Project Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Project Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, payable to the Mortgagor in connection with any condemnation or other taxing of the Project Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be the percentage of said condemnation proceeds for the Project Property equal to EDA's award percentage in the total cost of the award program for which the condemned Project Property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage – Mortgagee’s Copy:

Mortgagor shall record this Agreement and Mortgage in the Bureau of Conveyances of the State of Hawaii, thereby securing to EDA a first priority lien on the Project Property. Mortgagee shall be furnished a conformed copy of this Mortgage at the time of execution and after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor’s last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA’s address set forth above, except for any notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Remedies:

Upon Mortgagor’s breach of any covenant or agreement herein, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This Agreement and Mortgage may be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Agreement and Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Project Property, with power to lease and control the Project Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This Agreement and Mortgage shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument, which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has executed this Agreement and Mortgage as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

A completed duly recorded original or certified copy of this Agreement and Mortgage shall be forwarded to EDA.

HAWAI'I PACIFIC UNIVERSITY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Mortgagor

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this the \_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_  personally known to me **-OR-**  proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

(Official Stamp or Seal)

Doc. Date: _____ # Pages: _____
Notary Name: _____ First Circuit
Doc. Description: Agreement and Mortgage
_____ Notary Signature _____ Date _____ (Official Stamp or Seal)
NOTARY CERTIFICATION (at time of notarization)

EXHIBIT A

All of the leasehold estate and interest in, to and under General Lease No. S-6057 dated \_\_\_\_\_, 2017 but effective as of January 1, 2015, by and between the State of Hawaii by its Board of Land and Natural Resources, as lessor, and Hawai'i Pacific University, a Hawaii non-profit corporation, as lessee, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. \_\_\_\_\_, which general lease leases and demises the real property more particularly described as follows:

Being a portion of the Government (Crown) Land of Waimanalo designated as Hawaiian Home Lands by Section 203 of the Hawaiian Homes Commission Act, 1920 conveyed to the State of Hawaii by Hawaiian Homes Commission by exchange deed dated January 8, 1962 and recorded in Liber 4265, Pages 425-455 (Land Office Deed S-18686).

Beginning at the east corner of this parcel of land, at the northwest corner of Parcel 2 of Kalaniana'ole Highway Improvements, Retaining Wall at Makapuu, Governor's Executive Order 4177 and on the southwest side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU POINT" being 985.96 feet North and 2886.25 feet West, thence running by azimuths measured clockwise from True South

- |    |          |        |                                                                                                                                                                 |
|----|----------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 40° 00'  | 432.09 | feet along Parcel 2 of Kalaniana'ole Highway Improvements, Retaining Wall at Makapuu, Governor's Executive Order 4177;                                          |
| 2. | 320° 00' | 260.00 | feet along Parcel 2 of Kalaniana'ole Highway Improvements, Retaining Wall at Makapuu, Governor's Executive Order 4177 to the top of main ridge of Koolau Range; |

Thence along the top of main ridge of Koolau Range along R.P. 4475, L.C. Aw. 7713, Ap. 30 to Victoria Kamamalu for the next nine (9) courses, the direct azimuths and distances between points along said top of main ridge of Koolau Range being:

- |    |          |         |       |
|----|----------|---------|-------|
| 3. | 96° 55'  | 490.00  | feet; |
| 4. | 159° 00' | 250.00  | feet; |
| 5. | 109° 50' | 370.00  | feet; |
| 6. | 155° 45' | 350.00  | feet; |
| 7. | 127° 15' | 1100.00 | feet; |
| 8. | 81° 15'  | 580.00  | feet; |
| 9. | 150° 20' | 370.00  | feet; |

10. 109° 10' 380.00 feet;
11. 154° 20' 1180.00 feet;
12. 223° 04' 684.66 feet along the Hawaiian Home Lands of Waimanalo;
13. 313° 04' 557.15 feet along the southwest side of Kalaniana'ole Highway;
14. Thence along the southwest side of Kalaniana'ole Highway on a curve to the right with a radius of 2799.93 feet, the chord azimuth and distance being:  
316° 32' 338.61 feet;
15. 320° 00' 107.05 feet along the southwest side of Kalaniana'ole Highway;
16. Thence along the south side of Kalaniana'ole Highway on a curve to the left with a radius of 1259.01 feet, the chord azimuth and distance being:  
293° 32' 1122.22 feet;
17. 267° 04' 194.87 feet along the south side of Kalaniana'ole Highway;
18. Thence along the south side of Kalaniana'ole Highway on a curve to the right with a radius of 1081.28 feet, the chord azimuth and distance being:  
314° 01' 1580.31 feet;
19. 0° 58' 49.80 feet along the west side of Kalaniana'ole Highway;
20. Thence along the southwest side of Kalaniana'ole Highway on a curve to the left with a radius of 884.02 feet, the chord azimuth and distance being:  
343° 49' 56" 520.89 feet to the point of beginning and containing an AREA OF 105.937 ACRES, MORE OR LESS.

SUBJECT, HOWEVER, to the following:

- A. Portion of Perpetual Non-Exclusive Easement for Electric Transmission Lines, Easement 1 covered by Grant of Easement: State of Hawaii to

Hawaiian Electric Co., Inc. dated April 3, 1969 and recorded in Liber 6512, Page 122 (Land Office Deed S-24769).

- B. Perpetual Non-Exclusive Easement for Guy and Anchor Purposes, Easements 2 and 3 covered by Grant of Easement: State of Hawaii to Hawaiian Electric Co., Inc. dated April 3, 1969 and recorded in Liber 6512, Page 122 (Land Office Deed S-24769).
- C. Portion of Perpetual Non-Exclusive Easement for Telephone Transmission Lines, Easement 1 covered by Grant of Easement: State of Hawaii to GTE Hawaiian Telephone Co., Inc. dated November 14, 1991 and recorded as Document No. 91-156750 (Land Office Deed S-27892).
- D. Perpetual Non-Exclusive Easement for Guy and Anchor Purposes, Easements 2 and 3 covered by Grant of Easement: State of Hawaii to GTE Hawaiian Telephone Co., Inc. dated November 14, 1991 and recorded as Document No. 91-156750 (Land Office Deed S-27892).
- E. Mineral and water rights of any nature.
- F. A right of first refusal in favor of Attractions Hawaii, a Hawaii general partnership contained in the sublease, a memorandum of which is dated May 18, 1973, effective as of January 1, 1972 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 9158 at Page 211.
- G. Designation of Easement "1" (25 feet wide) for electric and telephone transmission line purposes as shown on consolidation of Lot 1 and Lot 2, as shown in DPP File No. 1973, dated December 19, 2005, Revised January 9, 2006.

EXHIBIT B

That portion of the following described land which is at any time during the term of the foregoing Agreement and Mortgage occupied by any of the improvements for the Project including, without limitation, the learning center building, the training facility building, central courtyard and saltwater tank, said portion of the land and all improvements thereon being referred to as the "Property". The Property is part of a certain parcel of land being leased to Hawai'i Pacific University, a Hawaii non-profit corporation, by and through its Board of Land and Natural Resources, by General Lease No. S-6057, containing approximately 56.338 acres more or less, and being the following:

All of that certain parcel of land situate, lying and being at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, being the Government Land of Waimanalo, comprising Tax Map Keys 4-1-014-004 (1) and 4-1-014-013 (1), and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunaloa and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west, as shown on Government Survey Registered Map 2832, thence running by azimuths measured clockwise from true South:

Along the top of main ridge of Koolau Range, along L.C.Aw. 7713 Apana 30 to V. Kamamalu (Land of Maunaloa) for the next 12 courses, the direct azimuths and distances between points on said main ridge being:

- |     |          |          |       |
|-----|----------|----------|-------|
| 1.  | 92° 09'  | 483.90   | feet; |
| 2.  | 59° 35'  | 500.00   | feet; |
| 3.  | 136° 55' | 690.00   | feet; |
| 4.  | 96° 55'  | 490.00   | feet; |
| 5.  | 159° 00' | 250.00   | feet; |
| 6.  | 109° 50' | 370.00   | feet; |
| 7.  | 155° 45' | 350.00   | feet; |
| 8.  | 127° 15' | 1,100.00 | feet; |
| 9.  | 81° 15'  | 580.00   | feet; |
| 10. | 150° 20' | 370.00   | feet; |

11. 109° 10' 380.00 feet;
12. 154° 20' 1,100.00 feet;
13. 223° 04' 684.66 feet along the remainder of the Hawaiian Home Land of Waimanalo;
14. 313° 04' 557.15 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
15. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 2,799.93 feet, the chord azimuth and distance being:  
316° 32' 338.61 feet;
16. 320° 00' 107.05 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
17. Thence running along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 1,259.01 feet, the chord azimuth and distance being:  
293° 32' 1,122.22 feet;
18. 267° 04' 194.87 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
19. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 1,081.28 feet, the chord azimuth and distance being:  
314° 01' 1,580.31 feet;
20. 0° 58' 49.80 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
21. Thence running along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 884.02 feet, the chord azimuth and distance being:  
341° 29' 589.70 feet;
22. 322° 00' 340.41 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
23. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 702.27 feet, the chord azimuth and distance being:  
298° 30' 560.06 feet;

24. 275° 00' 256.88 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
25. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 345.28 feet, the chord azimuth and distance being:
- 303° 32' 48" 330.00 feet to the point of beginning and containing an area of 118.0 acres, more or less.

Together with suitable easements under and across Kalaniana'ole Highway and under and across Kaupo Beach Park to the ocean for the pumping and discharge of sea water as required for the operation of the exhibiting and research facilities, such easements to be determined as to size and exact location by engineering requirements and not to exceed the minimum area actually necessary for the purpose; provided, that installation and utilization of such permitted facilities in subject easements shall be effected with the minimum possible interference with the utilization of said Kalaniana'ole Highway and Kaupo Beach Park for their respective purposes and with the approval of the State Department of Transportation, Highways Division, and the City and County of Honolulu.

LESS the following premises containing an area of 61.622 acres, more or less:

All of that certain parcel of land situate, lying and being on the southerly side of Kalaniana'ole Highway at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, being a portion of the Government Land at Waimanalo leased to the Oceanic Foundation pursuant to State of Hawaii General Lease No. S-3709, dated October 19, 1962, and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunalua and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west as shown on Government Survey Registered Map 2832 and running by azimuths measured clockwise from true South:

Following along top of main ridge of Koolau Range, along L. C. Aw. 7713, Apana 30 to V. Kamamalu (Land of Maunalua) for the next eight (8) courses, the direct azimuths and distances between points being:

1. 92° 09' 483.40 feet;
2. 59° 35' 500.00 feet;
3. 136° 55' 690.00 feet;
4. 96° 55' 490.00 feet;

5.	159°	00'	250.00	feet;
6.	109°	50'	370.00	feet;
7.	155°	45'	350.00	feet;
8.	127°	15'	1100.00	feet;
9.	247°	33' 10"	719.39	feet along Area 2, along remainder of Government Land of Waimanalo;
10.	224°	00'	100.00	feet along Area 2, along remainder of Government Land of Waimanalo;
11.	286°	00'	60.00	feet along Area 2, along remainder of Government Land of Waimanalo;
12.	239°	20'	76.00	feet along Area 2, along remainder of Government Land of Waimanalo;
13.	228°	20'	61.00	feet along Area 2, along remainder of Government Land of Waimanalo;
14.	189°	10'	102.00	feet along Area 2, along remainder of Government Land of Waimanalo;
15.	207°	40'	49.00	feet along Area 2, along remainder of Government Land of Waimanalo;
16.	294°	00'	111.64	feet along Area 2, along remainder of Government Land of Waimanalo;
17.	15°	40'	136.00	feet along Area 2, along remainder of Government Land of Waimanalo;
18.	296°	25'	146.80	feet along Area 2, along remainder of Government Land of Waimanalo;
19.	204°	45'	171.08	feet along Area 2, along remainder of Government Land of Waimanalo;
20.	110°	35'	173.00	feet along Area 2, along remainder of Government Land of Waimanalo;
21.	192°	30'	220.51	feet along Area 2, along remainder of Government Land of Waimanalo;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 1081.28 feet, the chord azimuth and distance being:

22. 322° 38' 30" 1341.05 feet;

23. 00° 58' 49.80 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 884.02 feet, the chord azimuth and distance being:

24. 341° 29' 589.70 feet;

25. 322° 00' 340.41 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 702.27 feet, the chord azimuth and distance being:

26. 298° 30' 560.06 feet;

27. 275° 00' 256.88 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 345.28 feet, the chord azimuth and distance being:

28. 303° 32' 48" 330.00 feet to the point of beginning and containing an area of 61.662 acres, more or less.

# EXHIBIT E-1

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AFTER RECORDATION, RETURN BY Mail ( ) Pickup ( )

Total Pages: \_\_\_\_\_

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TMK NOS.: (1) 4-1-014:004 and 011

### COVENANT OF USE

WHEREAS, HAWAII PACIFIC UNIVERSITY, a Hawaii non-profit corporation (hereinafter “**HPU**”) is the successor by merger to The Oceanic Institute, a Hawaii non-profit corporation (hereinafter “**OI**”).

WHEREAS, OI previously applied to, received and accepted from the UNITED STATES DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION (hereinafter “**EDA**”), the address of which is Main Commerce Building, Washington, D.C. 20230, two awards described as follows:

1. An award in the amount of One Million Dollars (\$1,000,000.00) (hereinafter “**First Award Amount**”) pursuant to a Financial Assistance Award (hereinafter “**First Award Agreement**”) accepted by OI on October 9, 2000, and bearing EDA Project Number 07-01-04868. Pursuant to the application filed by OI requesting said award and pursuant to the First Award Agreement, the First Award Amount was used for the purpose of assisting in the financing of improvements consisting of a training facility building, central courtyard and saltwater tank (hereinafter “**ITT Improvements**”) on a portion of the real property described in Exhibit A attached hereto and made a part hereof (the “**Real Property**”).
2. An award in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (hereinafter “**Second Award Amount**” and”) pursuant to a Financial Assistance Award (hereinafter “**Second Award Agreement**”) accepted by OI on May

28, 2008, and bearing EDA Project Number 07-01-06170. Pursuant to the application filed by OI requesting said award and pursuant to the Second Award Agreement, the Second Award Amount was used for the purpose of assisting in the financing of improvements consisting of an oceanic learning center (hereinafter “**OLC Improvements**”) on a portion of the Real Property.

WHEREAS, in connection with the cancellation of General Lease No. S-3709 and the execution and delivery of General Lease No. S-6057 between the State of Hawaii as lessor and HPU, as lessee, the Covenant of Purpose, Use and Ownership (Information Technology and Training Center) recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-005746 and the Covenant of Purpose, Use and Ownership (Oceanic Learning Center) recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-173241 are to be released subject to the execution, delivery and recordation of this covenant and an Agreement and Mortgage between HPU and EDA.

WHEREAS, the State of Hawaii as the owner of the Real Property agreed to record this Covenant of Use in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of the restrictions on use of the ITT Improvements, the OLC Improvements and that portion of the Real Property underlying the ITT Improvements and the OLC Improvements (collectively, the “**Project Property**”).

WHEREAS, due to the unique history of this particular project EDA agrees to recording of this covenant prior to the expiration of the useful life of the projects and with language that encompasses State of Hawaii requirements.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the State of Hawaii, through its Board of Land and Natural Resources, hereby covenants and agrees that:

1. Whenever the State of Hawaii sells, leases or otherwise transfers all or any portion of the Project Property, the applicable deed, lease or other transfer document shall include a provision that the grantee, lessee or other transferee shall not use the Project Property in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

2. At all times there remains this continuing covenant on the land for non-discrimination. EDA and Recipient agree that this restriction prohibits the use of the Project Property for any purpose that would violate the non-discrimination requirements contained in 13 CFR 302.20. As such, EDA should be advised of any action to modify this Covenant or any potential violations.

3. This Covenant shall run with the land.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources, to be hereunto

affixed and the parties hereto have caused these presents to be executed as of \_\_\_\_\_  
\_\_\_\_\_, 2017.

STATE OF HAWAII

Approved by the Board of  
Land and Natural Resources at  
its meetings held on  
\_\_\_\_\_, 2017.

By \_\_\_\_\_  
SUZANNE D. CASE  
Chairperson  
Board of Land and  
Natural Resources

EXHIBIT A

That portion of the following described land which is at any time during the term of the foregoing covenant occupied by any of the improvements for the Project including, without limitation, the learning center building, the training facility building, central courtyard and saltwater tank, said portion of the land and all improvements thereon being referred to as the "Property". The Property is part of a certain parcel of land being leased to Hawai'i Pacific University, a Hawaii non-profit corporation, by and through its Board of Land and Natural Resources, by General Lease No. S-6057, containing approximately 56.338 acres more or less, and being the following:

All of that certain parcel of land situate, lying and being at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, being the Government Land of Waimanalo, comprising Tax Map Keys 4-1-014-004 (1) and 4-1-014-013 (1), and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunaloa and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west, as shown on Government Survey Registered Map 2832, thence running by azimuths measured clockwise from true South:

Along the top of main ridge of Koolau Range, along L.C.Aw. 7713 Apana 30 to V. Kamamalu (Land of Maunaloa) for the next 12 courses, the direct azimuths and distances between points on said main ridge being:

- |     |          |          |       |
|-----|----------|----------|-------|
| 1.  | 92° 09'  | 483.90   | feet; |
| 2.  | 59° 35'  | 500.00   | feet; |
| 3.  | 136° 55' | 690.00   | feet; |
| 4.  | 96° 55'  | 490.00   | feet; |
| 5.  | 159° 00' | 250.00   | feet; |
| 6.  | 109° 50' | 370.00   | feet; |
| 7.  | 155° 45' | 350.00   | feet; |
| 8.  | 127° 15' | 1,100.00 | feet; |
| 9.  | 81° 15'  | 580.00   | feet; |
| 10. | 150° 20' | 370.00   | feet; |

11. 109° 10' 380.00 feet;
12. 154° 20' 1,100.00 feet;
13. 223° 04' 684.66 feet along the remainder of the Hawaiian Home Land of Waimanalo;
14. 313° 04' 557.15 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
15. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 2,799.93 feet, the chord azimuth and distance being:  
316° 32' 338.61 feet;
16. 320° 00' 107.05 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
17. Thence running along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 1,259.01 feet, the chord azimuth and distance being:  
293° 32' 1,122.22 feet;
18. 267° 04' 194.87 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
19. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 1,081.28 feet, the chord azimuth and distance being:  
314° 01' 1,580.31 feet;
20. 0° 58' 49.80 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
21. Thence running along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 884.02 feet, the chord azimuth and distance being:  
341° 29' 589.70 feet;
22. 322° 00' 340.41 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
23. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the left having a radius of 702.27 feet, the chord azimuth and distance being:  
298° 30' 560.06 feet;

24. 275° 00' 256.88 feet along the southwest side of Kalaniana'ole Highway (100 feet wide);
25. Thence along the southwest side of Kalaniana'ole Highway (100 feet wide) on a curve to the right having a radius of 345.28 feet, the chord azimuth and distance being:
- 303° 32' 48" 330.00 feet to the point of beginning and containing an area of 118.0 acres, more or less.

Together with suitable easements under and across Kalaniana'ole Highway and under and across Kaupo Beach Park to the ocean for the pumping and discharge of sea water as required for the operation of the exhibiting and research facilities, such easements to be determined as to size and exact location by engineering requirements and not to exceed the minimum area actually necessary for the purpose; provided, that installation and utilization of such permitted facilities in subject easements shall be effected with the minimum possible interference with the utilization of said Kalaniana'ole Highway and Kaupo Beach Park for their respective purposes and with the approval of the State Department of Transportation, Highways Division, and the City and County of Honolulu.

LESS the following premises containing an area of 61.622 acres, more or less:

All of that certain parcel of land situate, lying and being on the southerly side of Kalaniana'ole Highway at Waimanalo, District of Koolaupoko, City and County of Honolulu, State of Hawaii, being a portion of the Government Land at Waimanalo leased to the Oceanic Foundation pursuant to State of Hawaii General Lease No. S-3709, dated October 19, 1962, and thus bounded and described:

Beginning at the east corner of this parcel of land, on the boundary between the lands of Waimanalo and Maunalua and on the southwesterly side of Kalaniana'ole Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 226.82 feet north and 1,609.82 feet west as shown on Government Survey Registered Map 2832 and running by azimuths measured clockwise from true South:

Following along top of main ridge of Koolau Range, along L. C. Aw. 7713, Apana 30 to V. Kamamalu (Land of Maunalua) for the next eight (8) courses, the direct azimuths and distances between points being:

1. 92° 09' 483.40 feet;
2. 59° 35' 500.00 feet;
3. 136° 55' 690.00 feet;
4. 96° 55' 490.00 feet;

5.	159°	00'	250.00	feet;
6.	109°	50'	370.00	feet;
7.	155°	45'	350.00	feet;
8.	127°	15'	1100.00	feet;
9.	247°	33' 10"	719.39	feet along Area 2, along remainder of Government Land of Waimanalo;
10.	224°	00'	100.00	feet along Area 2, along remainder of Government Land of Waimanalo;
11.	286°	00'	60.00	feet along Area 2, along remainder of Government Land of Waimanalo;
12.	239°	20'	76.00	feet along Area 2, along remainder of Government Land of Waimanalo;
13.	228°	20'	61.00	feet along Area 2, along remainder of Government Land of Waimanalo;
14.	189°	10'	102.00	feet along Area 2, along remainder of Government Land of Waimanalo;
15.	207°	40'	49.00	feet along Area 2, along remainder of Government Land of Waimanalo;
16.	294°	00'	111.64	feet along Area 2, along remainder of Government Land of Waimanalo;
17.	15°	40'	136.00	feet along Area 2, along remainder of Government Land of Waimanalo;
18.	296°	25'	146.80	feet along Area 2, along remainder of Government Land of Waimanalo;
19.	204°	45'	171.08	feet along Area 2, along remainder of Government Land of Waimanalo;
20.	110°	35'	173.00	feet along Area 2, along remainder of Government Land of Waimanalo;
21.	192°	30'	220.51	feet along Area 2, along remainder of Government Land of Waimanalo;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 1081.28 feet, the chord azimuth and distance being:

22. 322° 38' 30" 1341.05 feet;

23. 00° 58' 49.80 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 884.02 feet, the chord azimuth and distance being:

24. 341° 29' 589.70 feet;

25. 322° 00' 340.41 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the left with a radius of 702.27 feet, the chord azimuth and distance being:

26. 298° 30' 560.06 feet;

27. 275° 00' 256.88 feet along the southwesterly side of Kalaniana'ole Highway;

Thence running along the southwesterly side of Kalaniana'ole Highway on a curve to the right with a radius of 345.28 feet, the chord azimuth and distance being:

28. 303° 32' 48" 330.00 feet to the point of beginning and containing an area of 61.662 acres, more or less.